

Serial No. 10/213,162
Attorney Docket No.: PC10833A

Remarks

After entry of this amendment, claims 1-6, 9-27, 30-38 and 40-46 are pending in the present application. Claim 1 is amended by incorporation of dependent claims 7 and 8. Claims 7 and 8 are cancelled. Claims 15, 16, 17 and 18 are amended to correct the dependency. Claim 19 is amended including insertion of material from page 12, lines 15-19. Claims 28 and 29 are cancelled. Claim 38 is amended to clarify the unit kilopond. Claim 39 is cancelled. Claims 40-46 are newly added with support as follows: claim 40 support from page 9, lines 5-13 and claims 41-46 support from claim 1. It is requested that all cancelled claims are cancelled without prejudice. No new matter was added by these amendments.

1. Claim Rejections Under 35 U.S.C. § 112

The Examiner rejects claim 38 under 35 U.S.C. § 112, paragraph 2, for indefiniteness. The claim amendment obviate this rejection.

2. Claim Rejections Under 35 U.S.C. § 102(b)

The Examiner rejects claims 1-7, 9-14, 19-21, 24-35 and 39 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,118,512 to Eichelburg ("Eichelburg") and claims 28, 29, and 39 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,824,336 to Jans et al ("Jans").

The present application is directed at palatable pharmaceutical compositions that include palatability improving agent(s) mixed with the pharmaceutically active agent. The palatability improving agents may be artificial egg, artificial beef, artificial poultry, artificial fish, dairy based palatability improving agent and natural herbs and spices, or a mixture thereof, or a yeast or yeast hydrolysate or a combination thereof.

Eichelburg discloses compositions that include ingesta and yeast hydrolyzate, wherein the ingesta can be made from grain and/or vegetable proteins.

Jans discloses palatable compositions that include an active ingredient, binder, filler, yeast and meat flavor.

The claims as amended obviate this rejection.

3. Claim Rejections Under 35 U.S.C. § 103(a)

The Examiner rejects claims 1-37 and 39 under 35 U.S.C. § 103(a) as allegedly unpatentable over Eichelburg in view of Likarova U.S. Patent No. 5,224,989 ("Likarova")

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and claims 22, 23 and 36-38 under 35 U.S.C. § 103(a) as allegedly unpatentable over Eichelburg in view of Jans. This rejection is respectfully traversed.

Applicants contend that the amended claims are not *prima facie* obvious in view of the references of record. The Board of Patent Appeals and Interferences has stated that "to establish a *prima facie* case of obviousness, it is necessary for the examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention." Ex parte Levengood, 28 U.S.P.Q.2d 1300, 1301 (BOPAI 1993). Not only must there be evidence of motivation, but also, the skilled worker must have an expectation that the modified teachings would be successful. Both combinations fail to meet these requirements.

Given the claim amendments, these combinations do not contain every claim element. As a result, a skilled worker would have no motivation to further modify the combinations. For example, Eichelburg's and Jans palatability agents differ from those recited in claim 1 of the present invention. Furthermore, Likarova discloses compositions with palatability agents as films, not mixed with the active ingredient, as recited in both independent claims 1 and 19. In fact, Eichelburg discusses that admixtures reduce the palatability effects by virtue of dilution. See col. 9, lines 22-25. As a result, Applicants respectfully request withdrawal of this rejection.

4. Election

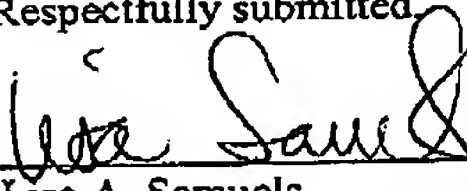
The Examiner has restricted the invention to a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Without traverse with respect to claim 1, Applicants elect species d, palatability improving agent is artificial beef. However, Applicants traverse the restriction with respect to claim 19 as amended.

Applicants believe that further and favorable action in the form of a Notice of Allowance Issue is next in order, and such action is earnestly solicited. Should the Examiner have any questions or comments regarding this amendment or the application in general, he is invited to call the undersigned at (860) 686-0349.

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A petition for a three month extension of time is included herewith; as such, the Commissioner is hereby authorized to charge the two month extension of time fee, and any other fees that may be required, or credit any overpayment, to Deposit Account No. 16-1445.

Date: 9/3/03

Respectfully submitted,


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